

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4248 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

RANIP NAGAR PANCHAYAT

Versus

THE COLLECTOR, AHMEDABAD DIST. & ORS.

Appearance:

MR PR JOSHI for Petitioner
MR MUKESH PATEL for Respondent No. 1
None present for Respondent No. 2
MR A. HAMEED KURESHI for Respondent No.3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 30/08/96

ORAL JUDGMENT

Heard learned counsel for the parties. The petitioner herein the Nagar Panchayat, filed this writ petition challenging thereunder the order of the Collector, annexure 'G' dated 23.5.83 and reply of the said officer dated 2.7.83, annexure 'F'.

2. Annexure 'F' is the reply which has been given by the Collector under which the petitioner has been informed that the land of Survey No.359 has been resumed under the provisions of the Sub Section 4 of Section 96 of the Gujarat Panchayat Act, 1961 (hereinafter referred to as the 'Act 1961'), and this land was granted to the Slum Clearance Board as per order dated 13.5.83. The petitioner, Nagar Panchayat, resolved to transfer this land to respondent No.3, but it is not in dispute that the Collector has not given sanction for this transfer.

3. Though the learned counsel for the petitioner made manifold submissions in support of this case, I do not consider it appropriate to advert to all of them except one, on the basis of which this petition deserves to be accepted. The contention is that before making the order u/s.96(4) of the Act 1961, for the resumption of the land or site for the public purpose by the Government, the petitioner has not been given any notice or an opportunity of hearing.

4. On the other hand, the learned counsel for the respondent contended that Sub Section 4 of Section 96 of the Act 1961 nowhere provided that before making the order of resumption of the land which vests in Nagar Panchayat, any notice or opportunity of hearing is to be given to it. He further urged that the land which is ordered to be resumed was land of the Government though it was vested in the Nagar Panchayat. When the Government wants to resume its own land, there was no obligation for it to give notice or opportunity of hearing to the Nagar Panchayat. The notice or opportunity of hearing is not inbuilt in the provisions of Sub Section 4 of Section 96 of the Act 1961 and the petitioner cannot claim it to be as ofright.

5. I have given my thoughtful considerations to the submissions made by the learned counsel for the parties. The respondent No.1 filed reply to this Special Civil Application wherein it has been given out that the land is required for public purpose, i.e. for the construction of houses for weaker sections by the respondent No.2-Board. It is not a case where the Gram Panchayat needs this land for any other purpose, much less for public purposes. It is a case where the Gram Panchayat, however, had resolved to dispose of this land in favour of Kumkum Nagrik Co-operative Housing Society for construction of houses, which cannot be said to be a public purpose. The respondent has further stated that the land in question is a Gauchar land.

6. Whether this land is a Gauchar land or not and how far the Nagar Panchayat was justified to resolve to transfer this land to the Co-operative housing society are the matters to be dealt with by the respondent-State and not by this Court at this stage. Here is a case where the land though sought to be resumed for public purpose, but before doing so, it would have been better that the petitioner should have been given an opportunity of hearing. This is no doubt an administrative decision which relates to the resumption of land which vests in the Nagar Panchayat. This Court, in the case of Kanji Haridas Goradia & Anr. v. State of Gujarat & Anr., reported in 1994(1) GLR 375, has considered the provisions of Sub Section 4 of Section 96 of the Act 1961. That was also a case where the land vested in the Gram Panchayat for the purpose of Gauchar, was sought to be resumed. Though strictly, the facts of that case are not the same as the facts of this case, but even if the order is reasonable order, the petitioner should have been given an opportunity of hearing. In order to arrive at a fair and administrative decision, it is expected of the authority to give an opportunity to the concerned and affected person the Gram Panchayat to put forward its case. It is open and lawful to the authority to come to its own conclusion about resuming the land from the Nagar Panchayat for the public purposes, but there is no harm in case the Nagar Panchayat is also given an opportunity to give out its own view point. It is true, in the present case, the Gram Panchayat, itself has resolved to transfer this land for the purpose of constructing houses to private co-operative society and itself has not considered to retain this land as Gauchar land, but this is a matter to be taken by the Collector concerned and it may not be sanctioned. But merely on this ground, that the Gram Panchayat itself is not taking care of Gauchar land, I do not consider it to be appropriate to deny it an opportunity of hearing by the Government before making an order u/s.96(4) of the Act 1961.

7. In the result, this petition succeeds and the same is allowed. The reply and order, annexures 'F' and 'G', are set aside. It is hereby ordered that a fresh order be passed under Sub Section 4 of Section 96 of the Act 1961 after giving an opportunity of hearing to the petitioner. It is made clear that acceptance of this writ petition will not mean that this Court has approved of and found justified the action of the petitioner to resolve to transfer the land in question to the respondent No.3. Rule is made absolute in the aforesaid terms with no order as to costs.

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(sunil)